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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,114	10/15/2001	Richard H. Jones	PHB 34-221A	3750

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ART UNIT	PAPER NUMBER
2681	

DATE MAILED: 05/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.  
09/978,114

Applicant(s)

Jones et al.

Examiner

Joy K. Contee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Oct 15, 2001

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-10 is/are pending in the applica

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from considera

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-10 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirem

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b)disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c) None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. 09/216,261.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892)

18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because “(Figure 3)” is present on line 15. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-3 and 7 rejected under 35 U.S.C. 102(a) as being anticipate by Watanabe et al. (“Watanabe”), EP 0709812.

Regarding claim 1, Watanabe discloses a point-to-point communications device comprising:

receiving means for receiving a message; control means for determining if a received message is destined for the communication device; and alerting means for producing an alerting signal, the alerting signal being determined from the received message (col. 6, lines 5-39).

Regarding claim 2, Watanabe discloses a communications device as claimed in claim 1, characterized in that the alerting signal is an audible melodic signal (col. 4, lines 20-22).

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Regarding claim 3, Watanabe discloses a communications device as claimed in claim 2, characterized in that the audible melodic signal is derived from a numeric message received by the receiving means (col. 7, lines 25-39).

Regarding claim 7, Watanabe discloses a method of generating a melody in a point-to-point communications device, comprising receiving and decoding a message, and generating a melody using decoded message data (col. 3, lines 54-58 and col. 4, lines 1-19).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4,5,8 and 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe, in view of Morishima, U.S. Patent No. 6,075,998.

Regarding claim 4, which is dependent on claims 1, 2 or 3, Watanabe discloses the limitations of claims 1, 2 and 3. Watanabe does not disclose a communications device, characterized in that the control means divides the received message into a plurality of predesignated fields, one of which fields is used by the control means to determine tempo and other of said fields are used by the control means to determine notes.

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However, in a similar field of endeavor Morishima is evidence of a communications device, characterized in that the control means divides the received message into a plurality of predesignated fields, one of which fields is used by the control means to determine tempo and other of said fields are used by the control means to determine notes (col. 4, lines 1-61 and col. 5, lines 36-59.

At the time of the invention it would have been obvious to one of ordinary skill in the art that selectable audible alarm setting parameters in Watanabe would have been modified to include means for allowing the user to compose the melodic sound using numeric data, for the purpose of letting the user "freely" compose the alert as taught in Morishima.

Regarding claim 5, which is dependent on claim 3, Watanabe discloses the limitations of claim 3. Watanabe does not disclose a communications device, characterized in that the control means divides the received message into a plurality of predesignated fields, one of which fields is used by the control means to determine tempo, another of which fields is used by the control means to determine the number of plays of the melodic signal and further ones of said fields are used by the control means to determine notes.

However, in a similar field of endeavor Morishima is evidence a communications device, characterized in that the control means divides the received message into a plurality of predesignated fields, one of which fields is used by the control means to determine tempo, another of which fields is used by the control means to determine the number of plays of the

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melodic signal and further ones of said fields are used by the control means to determine notes (col. 4, lines 1-61 and col. 5, lines 36-59).

At the time of the invention it would have been obvious to one of ordinary skill in the art that selectable audible alarm setting parameters in Watanabe would have been modified to include means for allowing the user to compose the melodic sound using numeric data, for the purpose of letting the user "freely" compose the alert as taught in Morishima.

Regarding claim 8, which is dependent on claim 7, Watanabe discloses the limitations of claim 7. Watanabe does not disclose a method, characterized by dividing the decoded message into a plurality of predesignated fields, one of which fields is used to determine tempo and other of said fields are used to determine notes.

However, in a similar field of endeavor Morishima is evidence of a communications device, characterized in that the control means divides the received message into a plurality of predesignated fields, one of which fields is used by the control means to determine tempo and other of said fields are used by the control means to determine notes (col. 4, lines 1-61 and col. 5, lines 36-59).

At the time of the invention it would have been obvious to one of ordinary skill in the art that selectable audible alarm setting parameters in Watanabe would have been modified to include means for allowing the user to compose the melodic sound using numeric data, for the purpose of letting the user "freely" compose the alert as taught in Morishima.

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Regarding claim 9, which is dependent on claim 7, Watanabe discloses the limitations of claim 7. Watanabe does not disclose the method characterized by dividing the decoded message data into a plurality of predesignated fields, one of which fields is used to determine tempo, another of which fields is used to determine the number of plays of the melody signal and further ones of said fields are used to determine notes.

However, in a similar field of endeavor Morishima is evidence a communications device, characterized in that the control means divides the received message into a plurality of predesignated fields, one of which fields is used by the control means to determine tempo, another of which fields is used by the control means to determine the number of plays of the melodic signal and further ones of said fields are used by the control means to determine notes (col. 4, lines 1-61 and col. 5, lines 36-59).

At the time of the invention it would have been obvious to one of ordinary skill in the art that selectable audible alarm setting parameters in Watanabe would have been modified to include means for allowing the user to compose the melodic sound using numeric data, for the purpose of letting the user "freely" compose the alert as taught in Morishima.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CAR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CAR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CAR 3.73(b).

7. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,337,972 ("'972"). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-6 of the present application anticipate claims 1-6 of '972. Claim 1 of the present application discloses a point-to-point communications device comprising: receiving means for receiving a message; control means for determining if a received message is destined for the communication device; and alerting means for producing an alerting signal, the alerting signal being determined from the received message. Its dependent claim 6 discloses a communication device characterized in that each note is represented by a double character field and in that in response to ascertaining that there is an odd number of characters, a predetermined character is added to a predetermined signal character to provide a double character representative of a note. Claim 1 of '972 is written to include the limitations of the dependent claims 2-6 in the present invention.

Claim 7-10 of the present invention discloses a method of generating a melody in a point-to-point communications device, comprising receiving and decoding a message and generating a

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melody using a decoded message data. Claim 5 of '972 discloses claim 7 of the present invention including limitations of claims 9 and 10 of the present invention, which discloses a method characterized by dividing the decoded message data into a plurality of predesignated fields, one of which fields is used to determine tempo, another of which fields is used to determine the number of plays of the melody signal and further ones of said fields are used to determine notes; and a method characterized in that a note is represented by a double character field and in that in response to ascertaining that there is an odd number of characters, a predetermined character is added to a predetermined single character to provide a double character representative of a note.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nakazawa et al., U.S. Patent No. 5,739,759, discloses a melody paging apparatus.

Davis, U.S. Patent No. 4,868,561, discloses a method of reprogramming an alert pattern.

Yamaguchi, U.S. Patent No. 4,437,380, discloses a musical envelope-producing device.

Matsubara, U.S. Patent No. 4,622,879, discloses an electronic musical instrument.

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Tanabe, U.S. Patent No. 4,699,518, discloses a musical scale generating circuit.

Teruo et al., U.S. Patent No. 4,646,609, discloses a data input apparatus.

Salazar et al., U.S. Patent No. 5,802,467, discloses a wireless and wired communications, command, control and sensing system for sound and/or data transmission and reception.

Kobayashi, U.S. Patent No. 5,757,277, discloses a wireless selective call receiver and method and system for writing desired data in the same.

Munetsugu, U.S. Patent No. 4,519,044, discloses a small-sized electronic calculator capable of functioning as a musical instrument.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K. Contee whose telephone number is (703) 308-0149, M-F, 5:30 a.m. to 2:00 p.m.

If attempts to reach the Examiner are unsuccessful, her supervisor, Dwayne Bost can be reached on (703)305-4778.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)306-0377.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

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(703) 872-9314 (for formal communications intended for entry)

Or:

(703) 308-6306, (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

*Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).*



J K  
Joy K. Contee



Nay Maung  
PRIMARY EXAMINER

May 4, 2002